

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

EDWARD PHILLIP MCKENNA,

Plaintiff,

v.

CISNEROS, *et al.*,

Defendants.

Case No. 1:24-cv-00607-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE TO
ACTION

FINDINGS AND RECOMMENDATIONS
REGARDING PLAINTIFF'S MOTION FOR
COURT ORDER

(ECF No. 80)

FOURTEEN (14) DAY DEADLINE

I. Background

Plaintiff Edward Phillip McKenna ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action was transferred from the Sacramento Division of the United States District Court for the Eastern District of California on May 21, 2024. (ECF No. 75.) The third amended complaint has not yet been screened. (ECF No. 71.)

Currently before the Court is Plaintiff's April 28, 2025 filing, docketed as a motion for court order. (ECF No. 80.) In the motion, Plaintiff appears to allege that he is being retaliated against with false RVRs so he can be transferred to a Level 4 yard, where he fears he will be attacked or killed. Plaintiff appears to seek a court order to remove the allegedly false RVRs so

1 they cannot be used to keep setting Plaintiff up for future RVRs or assault. Plaintiff alleges that
2 he is being threatened to stop writing to the courts or filing grievances. Plaintiff has attached 60
3 pages of exhibits, which are not incorporated by reference. (*Id.*)

4 The Court construes Plaintiff's motion as a request for preliminary injunctive relief.

5 **II. Motion for Preliminary Injunction**

6 "A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter*
7 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). "A plaintiff seeking a
8 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to
9 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
10 favor, and that an injunction is in the public interest." *Id.* at 20 (citations omitted). An injunction
11 may only be awarded upon a clear showing that the plaintiff is entitled to relief. *Id.* at 22 (citation
12 omitted).

13 Federal courts are courts of limited jurisdiction and in considering a request for
14 preliminary injunctive relief, the Court is bound by the requirement that as a preliminary matter, it
15 have before it an actual case or controversy. *City of L.A. v. Lyons*, 461 U.S. 95, 102 (1983);
16 *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S.
17 464, 471 (1982). If the Court does not have an actual case or controversy before it, it has no
18 power to hear the matter in question. *Id.* Requests for prospective relief are further limited by 18
19 U.S.C. § 3626(a)(1)(A) of the Prison Litigation Reform Act, which requires that the Court find
20 the "relief [sought] is narrowly drawn, extends no further than necessary to correct the violation
21 of the Federal right, and is the least intrusive means necessary to correct the violation of the
22 Federal right."

23 Furthermore, the pendency of this action does not give the Court jurisdiction over prison
24 officials in general. *Summers v. Earth Island Inst.*, 555 U.S. 488, 491–93 (2009); *Mayfield v.*
25 *United States*, 599 F.3d 964, 969 (9th Cir. 2010). The Court's jurisdiction is limited to the parties
26 in this action and to the viable legal claims upon which this action is proceeding. *Summers*, 555
27 U.S. at 491–93; *Mayfield*, 599 F.3d at 969.

28 ///

1 Plaintiff has not met the requirements for the injunctive relief he seeks in this motion. The
2 Court is required to screen complaints brought by prisoners seeking relief against a governmental
3 entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff's
4 complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to
5 state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant
6 who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. § 1915(e)(2)(B)(ii).

7 As noted above, the third amended complaint has not yet been screened. As such, this
8 action does not yet proceed on any cognizable claims, no defendant has been ordered served, and
9 no defendant has yet made an appearance. Thus, the Court at this time lacks personal jurisdiction
10 over any defendant or any other prison staff at any CDCR institution. Even if the Court had such
11 jurisdiction, Plaintiff does not have a constitutional right to be incarcerated at a particular
12 correctional facility (or to not be transferred from one security level to another). *Meachum v.*
13 *Fano*, 427 U.S. 215, 224–25 (1976); *McCune v. Lile*, 536 U.S. 24, 38 (2002). The Court declines
14 to intercede in the security issue presented by preventing placement of inmates in particular
15 housing.

16 To the extent Plaintiff is attempting to raise new claims related to retaliation, the filing of
17 false RVRs, or other actions taken by correctional staff that Plaintiff believes is placing him in
18 danger, this action is not the appropriate way to raise these claims. If Plaintiff believes he has
19 suffered new or additional violations of his constitutional rights, he may wish to file a new and
20 separate civil rights action raising those claims.

21 With respect to the exhibits attached to Plaintiff's filing, Plaintiff is advised that at the
22 screening stage, Plaintiff does not need to attach exhibits, or have the Court review video
23 evidence, to prove the truth of what is said in the complaint. For screening purposes, facts stated
24 in complaints are accepted as true. Furthermore, the Court will not serve as a repository for
25 evidence.

26 **III. Order and Recommendation**

27 Accordingly, the Court HEREBY ORDERS that the Clerk of the Court randomly assign a
28 District Judge to this action.

1 Furthermore, it is HEREBY RECOMMENDED that Plaintiff's motion for court order,
2 (ECF No. 80), be denied.

3 These Findings and Recommendations will be submitted to the United States District
4 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
5 **fourteen (14) days** after being served with these Findings and Recommendations, the parties may
6 file written objections with the court. The document should be captioned "Objections to
7 Magistrate Judge's Findings and Recommendations." **Objections, if any, shall not exceed**
8 **fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page**
9 **number if already in the record before the Court. Any pages filed in excess of the 15-page**
10 **limit may not be considered.** The parties are advised that failure to file objections within the
11 specified time may result in the waiver of the "right to challenge the magistrate's factual
12 findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter*
13 *v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

14
15 IT IS SO ORDERED.

16 Dated: May 1, 2025

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE
19
20
21
22
23
24
25
26
27
28